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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ROGER U. HART et al.,

Plaintiffs, Cross-defendants and  
Appellants,

v.

MARK SHOTTEN et al.,

Defendants and Respondents;

PROPELLER SOLUTIONS, INC.

Defendant, Cross-complainant and  
Respondent.

D054703

(Super. Ct. No.  
37-2007-00067547-CU-FR-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Frederic L.  
Link, Judge. Affirmed.

Plaintiffs Roger U. Hart, his wife Roxanne D. Hart, and their corporation Process  
Innovations, Inc., (collectively Hart) appeal a judgment in favor of defendants Mark  
Shotton, Propeller Solutions, Inc., and R. Everett Roff in an action arising out of the sale  
by Shotton to Hart of his business known as Propeller Solutions (PS). On appeal, Hart

contends the trial court erred by: (1) denying Hart's motion for new trial based on insufficiency of the evidence to support the court's findings; (2) denying Hart's legal causes of action based on the court's findings made during the bifurcated trial on the equitable causes of action; (3) denying Hart's motion to amend the complaint prior to the trial on the legal causes of action; (4) finding Hart had consented to the sale transaction; (5) denying Hart's in limine motions to exclude evidence of negligence and lack of due diligence before the close of escrow on the sale, and mismanagement of PS after the close of escrow; and (6) issuing an inadequate statement of decision.<sup>1</sup>

#### FACTUAL AND PROCEDURAL BACKGROUND

In 2006 Shotton decided to sell PS, a boat propeller sales and repair business of Propeller Solutions, Inc. (PSI), which he owned. In August, he retained Roff, a business broker doing business as California Business Exchange, as his agent to sell PS. Interested in buying a business, Hart responded to a newspaper advertisement placed by Roff regarding a distributor business. Roff sent Hart a "Business Profile" for PS, which he had prepared after discussions with Shotton regarding PS. Shotton had told Roff that PS was the only distributor for ZF propellers in California and the only distributor for Veem propellers on the West Coast, but never told him PS was the only distributor that could sell those propellers in those areas. The Business Profile stated that PS included "2 EXCLUSIVE DISTRIBUTORSHIPS."

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<sup>1</sup> For convenience we address Hart's appellate contentions in the order presented to this court.

After meetings with Shotton and Roff and visits to the business, on September 28, 2006, Hart made an offer to buy PS. In a space for additional conditions on the printed form, Hart's offer stated: "Training schedule to be negotiated between Buyer/Seller. Condition[ed] upon exclusive distributorships['] satisfactory transfer to Buyer. Condition[ed] upon Buyer's attorney['s] approval." On October 9, Hart apparently accepted the terms of Shotton's counteroffer. On October 10, Shotton, Roger Hart, and Roff met at PS to discuss the business and its Veem and ZF distributorships. On October 11, Hart accepted the terms of Shotton's second counteroffer. Neither counteroffer contained language regarding PS's distributorships.

On November 27, the parties signed escrow instructions for the sale transaction. Those instructions stated:

"This escrow is contingent upon buyer's approval of successful transfer of *distributorship agreements* with both Veem and ZF Propellers to the new ownership. Seller will coordinate with both companies to acquire a letter acknowledging the change in ownership and agreement that [PS] will remain as their distributor in the territories defined in the distributor agreements. Buyer to notify escrow holder in writing upon satisfaction of said contingency.  
[¶] . . . [¶]

*"These escrow instructions supersede any conditions set forth in the 'Agreement to Purchase' of CBE by and between the parties herein."*  
(Italics added.)

On December 4, Shotton sent Hart an e-mail that attached copies of letters by which Veem and ZF accepted the transfer of PS's distributorships from Shotton to Hart. On the evening of December 4, Shotton provided Hart with copies of the Veem and ZF distributorship agreements.

On December 26, Hart sent a letter to Mission Valley Escrow (MVE), stating:  
"The following contingencies have been satisfied: [¶] Buyer's approval of successful transfer of distributorship agreements with Veem & ZF Propellers." On or about January 13, 2007, escrow closed on the sale transaction and PS was transferred to Hart.

On November 27, 2007, Hart filed the operative second amended complaint against Shotton, PSI, and Roff, alleging causes of action against Shotton and PSI for: (1) rescission based on fraud; (2) rescission based on unilateral mistake of fact; (3) damages based on fraud; and (4) damages based on breach of warranty. It also alleged causes of action against Roff for: (1) damages based on breach of fiduciary duty; and (2) damages based on negligence.

On January 25, 2008, the parties stipulated to bifurcation of the trial, stating:

"1. The Parties agree that a trial to the Court concerning [Hart's] equitable claims as set forth in [Hart's] first, second and fifth causes of action should occur first, commencing on the scheduled trial date of March 28, 2008;

"2. The Court, following completion of the trial of [Hart's] first, second and fifth causes of action, should then consider which of the remaining causes of action and/or issues need to be tried thereafter."

Prior to the bifurcated bench trial on Hart's equitable causes of action, the trial court denied Hart's in limine motions to exclude evidence of Hart's negligence and lack of due diligence before the close of escrow on the sale and mismanagement of PS after the close of escrow. Following a six-day trial, the court found Shotton had not made any misrepresentations to Hart, and Hart had not justifiably relied on the alleged misrepresentations. It further found Hart did not make any unilateral mistake of fact.

Shotton requested the trial court issue a statement of decision. Hart proposed revisions and objected to Shotton's proposed statement of decision. Hart also filed a motion to file a third amended complaint to amend the legal causes of action against Shotton and Roff. Shotton and Roff objected to that motion.

On July 18, after considering the parties' trial briefs on Hart's legal causes of action, the trial court conducted a hearing on whether Hart's legal causes of action against Shotton and Roff should be denied based on its findings during the equitable phase of the trial. Citing *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229 (*Nwosu*), the trial court concluded Hart's legal causes of actions were mooted by its findings in the equitable phase of the trial. The court further denied Hart's motion to amend the complaint, stating it would be unduly prejudicial to the defendants. The parties requested a statement of decision.

On September 3, the trial court issued a 10-page statement of decision, stating:

"The trial court herewith finds insufficient evidence to support any of [Hart's] causes of action and renders its decision in favor of the three defendants, and finds them to be the prevailing parties.  
[¶] . . . [¶]

"Mark Shotton accurately described to Roger Hart the business PSI was selling, including the distributorship agreements with Veem and ZF. The evidence presented at trial did not persuade the court that Mark Shotton materially misrepresented any element of the PSI business to [Hart], either directly or through his broker [Roff], as [Hart] had alleged. Consequently, there was no evidence of reasonable reliance by [Hart] upon a false representation of a material fact made by [Shotton] or [his] broker/agent [Roff] in this transaction. Likewise[,] the evidence did not persuade the court that [Roff] breached his fiduciary duty to [Hart], as alleged, by materially misrepresenting the business to [Hart], or by an omission of a material fact which should have been conveyed to his client, [Hart].

"As early as a September 12, 2006[,] meeting attended by Mark Shotton, Everett Roff and Roger Hart, Roger Hart was disabused of any notion the Veem and ZF distributorships provided [PS] with 'exclusive territories.' The court is persuaded that, prior to close of escrow, [Hart was] informed that (1) [PS] was the only Veem distributor on the West Coast, (2) [PS] was the only ZF distributor in California, and (3) [PS] was required to 'register' boat builders on the West Coast with Veem in order to 'lock up' those boat builders and ensure that those boat builders would be required to purchase Veem propellers only from [PS].

"The court is not persuaded that the early use, in [Roff's] business profile, of the language, 'two exclusive distributorships,' presented a material fact upon which [Hart] reasonably relied to purchase the business. The evidence persuades the court that through the period of time prior to the consummation of the purchase, [Shotton] described the natures of his two distributorships to [Hart], and [Hart] confirmed their natures through independent contacts, including Joel Kmetz, who testified to this during the trial. The final escrow agreement contained no use of the term 'exclusive distributorship' to describe either distributorship held by the business, evidence that [Hart] and [Shotton] had consensually discarded this terminology. . . . [T]he court finds that neither [Shotton and PSI], nor [Roff], committed a misrepresentation of a material fact, surrounding the use of the term 'two exclusive distributorships,' upon which [Hart] reasonably relied to purchase [PS].

"The absence of 'exclusive territories' in the Veem and ZF distributorships was confirmed for Roger Hart in his discussions in October 2006 with Joel Kmetz of General Propeller, a distributor of Veem and ZF propellers, who informed Roger Hart that General Propeller did not have 'exclusive territories' under its distributorship agreements with Veem and ZF.

"The court is persuaded that [Hart] made [its] own independent investigation of the [PS] business, had the assistance of an attorney in investigating the nature of the business and in creating the contract documents by which [Hart] purchased the business, and satisfied [itself] that [it] could properly operate the business.

"Mark Shotton did not make any misrepresentation(s) of material fact fraudulently inducing [Hart] to enter into the contract to purchase [PS].

"The broker [Roff] did not make any misrepresentation(s) of material fact fraudulently inducing [Hart] to purchase the business. Statements concerning the value of property are generally deemed to be expressions of personal opinion and not actionable representations of fact upon which the other party can rely. [Citation.]

"Mark Shotton did not misrepresent to [Hart] the alleged fact that [PS] has two 'exclusive distributorships.' [¶] . . . [¶]

"[Hart] did not rely on any understanding that [PS] had 'exclusive distributorships' (i.e., 'exclusive territories') in making the decision to purchase the business.

"Any reliance by [Hart] on any understanding that [PS] had 'exclusive distributorships' (i.e., 'exclusive territories') in making the decision to purchase the business was not justifiable.

"There was no persuasive evidence presented at trial of a unilateral mistake by [Hart] . . . in entering into the contract to purchase [PS] and in closing escrow and completing the purchasing of the business. [¶] . . . [¶]

"The court observes that the success of [PS] prior to the closing of the sale . . . was due primarily to the personality and efforts of Mark Shotton as a marketer and salesman. [Hart's] lack of success in operating the [PS] business was due primarily to the fact that Roger Hart's personality and business approach differed from Mark Shotton's personality and business approach, including the ability and/or inclination to continue to operate the business as Mark Shotton had, and the downturn in the economy. [Hart's] lack of success was not due to any wrongful conduct on the part of Mark Shotton.

The trial court then concluded:

"The court's decision on the causes of action for rescission has resulted in factual and legal findings—that Shotton made no misrepresentations in the sale of the business upon which [Hart]

justifiably relied—that have conclusively determined [Hart's] legal claims against defendants Shotton and PSI, in [its] Fourth and Sixth causes of action in the second amended complaint. Therefore, the factual and legal issues decided by the court in the equitable phase of the trial become 'conclusive on issues actually litigated between the parties.' [Citing *Nwosu*.] Accordingly, [Hart's] legal claims against defendants Shotton and PSI have been effectively mooted by the court's ruling in the equitable phase of the trial and the prior disposition of the legal claims by the court in equity estop [Hart] from relitigating these already determined factual issues in [Hart's] claims at law."

On December 5, 2008, the trial court entered a judgment against Hart and for Shotton, PSI, and Roff. On December 23, 2008, Hart filed a motion for new trial based on insufficiency of the evidence to justify the court's decision. (Code Civ. Proc., § 657, subd. (6).)<sup>2</sup> On January 30, 2009, the trial court denied that motion.

Hart timely filed a notice of appeal.

## DISCUSSION

### I

#### *Denial of Hart's Motion for New Trial*

Hart contends the trial court erred by denying the motion for new trial based on insufficiency of the evidence to support the court's decision. (§ 657, subd. (6).)

### A

Section 657 provides in pertinent part:

"The verdict may be vacated and any other decision may be modified or vacated, in whole or in part, and a new or further trial granted on all or part of the issues, . . . for any of the following causes, materially affecting the substantial rights of such party:

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<sup>2</sup> All statutory references are to the Code of Civil Procedure unless otherwise specified.



[¶] . . . [¶] 6. Insufficiency of the evidence to justify the verdict or other decision . . . . [¶] . . . [¶]

"A new trial shall not be granted upon the ground of insufficiency of the evidence to justify the verdict or other decision, nor upon the ground of excessive or inadequate damages, unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision."

"A trial court's broad discretion in ruling on a motion for new trial is accorded great deference on appeal. [Citation.] However, particularly when reviewing an order denying a new trial, the appellate court is required to review the entire record to determine independently whether the error on which the new trial motion is based is prejudicial." (*Plancarte v. Guardsmark* (2004) 118 Cal.App.4th 640, 645.) On appeal, the trial court's determination on a motion for new trial will not be reversed unless the court has abused its discretion. (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 832.) Nevertheless, "any determination underlying any order is scrutinized under the test appropriate to such determination. [Citations.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 859.)

A challenge to a verdict or decision based on insufficiency of the evidence requires the court to determine whether there is substantial evidence to support the verdict or decision. "When reviewing a claim of insufficiency of evidence, [a court] must view the evidence in the light most favorable to the verdict and presume in support of the judgment the existence of every fact that the trier of fact could reasonably deduce from that evidence. The test is whether substantial evidence supports the conclusion of the trier of fact . . . . Substantial evidence must be of ponderable legal significance,

reasonable in nature, credible and of solid value." (*People v. Briscoe* (2001) 92 Cal.App.4th 568, 584-585.) To determine whether the trial court abused its discretion in denying Hart's motion for new trial, we, like the trial court, apply the substantial evidence standard of review.

## B

Based on our independent review of the record, we conclude there is substantial evidence to support the trial court's judgment in favor of Shotton, PSI, and Roff. Hart's primary allegation at trial was that Shotton and Roff misrepresented that PS had exclusive distributorship agreements with Veem and ZF when, in fact, they did not. However, after conducting a six-day bench trial on Hart's equitable causes of action, the trial court found that neither Shotton nor Roff made any misrepresentation of material fact to Hart, including any misrepresentation that PS had two exclusive distributorships. There is substantial evidence to support that finding. Shotton told Roff that PS was the only ZF distributor in California and the only Veem distributor on the West Coast. Based on that information, Roff prepared and gave Hart a copy of the Business Profile for PS, describing PS as having two "exclusive" distributorships. Roff did not explain to Hart what an exclusive distributorship was because he had not seen any of PS's distributorship agreements. On September 12, 2006, Shotton, Roff, and Roger Hart met at PS to discuss the business.

On September 28, 2006, Hart made an offer to purchase PS. Hart's offer stated in part: "Condition[ed] upon exclusive distributorships['] satisfactory transfer to Buyer." On October 9, Hart apparently accepted the terms of Shotton's counteroffer. On October 10,

2006, Shotton, Roger Hart, and Roff met at PS to discuss the business and the nature of its Veem and ZF distributorships. At trial, Roff testified that at the October 10 meeting:

"Shotton explained to Roger Hart that the Veem distributorships were based on an exclusive supply arrangement where you had to lock in or register particular customers and they would protect you. And when it came to ZF propellers . . . [Shotton] had explained that he had heard from the general manager of ZF, the manager of US with ZF, and he said that all you have to do is e-mail me, and I'll protect you for that particular customer."<sup>3</sup>

Roff further testified it was discussed that it was necessary to "lock-in" West Coast boat builders and register them with Veem to ensure those builders would have to buy Veem propellers from PS. Shotton told Roger Hart that he (i.e., as PS's buyer) would have to register those boat builders with Veem to be guaranteed an exclusive supply agreement with each of them. Shotton told Roger Hart that PS would need to be locked up with boat builders in "[a]ny area" to require them to purchase Veem propellers only from PS.

Shotton described how PS had an exclusive supply arrangement with Cabo Yachts, a West Coast boat builder, which he registered with Veem; therefore, any Veem propellers sold to Cabo Yachts (or its boat buyers) would go through PS even if the boat was on the East Coast. Shotton further told Roger Hart that PS could sell Veem propellers to a boat builder anywhere in the country and register that builder with Veem. It was open territory for anyone to compete and sell Veem propellers. However, because PS was the only Veem distributor located on the West Coast, Shotton suggested PS focus on

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<sup>3</sup> Roff further testified that at the October 10 meeting Shotton told Hart regarding ZF that he (Shotton) spoke with ZF's national sales manager on the telephone and was informed that all Hart would have to do was call the sales manager and then e-mail him to register a prospective customer with ZF.

California and register as many boat builders there as possible. As Shotton explained, any East Coast distributor could work with a customer on the West Coast just like Hart (i.e., PS) could work with any customer on the East Coast. Most importantly, Roff testified at trial that Shotton specifically told Roger Hart at the October 10 meeting that Hart "*was not going to receive exclusive distributorships.*" (Italics added.) Instead, Hart was "going to receive exclusive supply arrangements for Veem."

Shotton testified at trial that at the October 10 meeting he told Roger Hart "what he was going to get[,] not what he wasn't going to get. *I told him . . . there were no territories . . . [and] you could sell anywhere. . . . We had [an] exclusive supply arrangement with Cabo Yachts. [I] explained the whole locking[-]in system that Veem had in place, to lock in boat builders up and down the West Coast. I explained to him that if he wanted to register boat builders and projects with ZF that he would have to e-mail Keith Sparks[,] my national sales manager . . . .*" (Italics added.) Shotton told Roger Hart that PS had an exclusive supply arrangement with Cabo Yachts requiring any individual, propeller shop, or Veem distributor to buy any Veem replacement propeller through PS. Shotton also told Roger Hart PS had locked up Christianson Yachts and Nordland Yachts. Shotton testified he never told Roger Hart that PS was the only distributor that could sell Veem propellers on the West Coast. Shotton further testified he never told Roger Hart that PS was the only distributor that could sell ZF propellers in California. Likewise, Shotton testified he never told Roff PS was the only distributor that could sell Veem propellers on the West Coast or ZF propellers in California.

Furthermore, Roger Hart never asked Shotton if PS had two exclusive distributorships and never told Shotton he believed PS had two exclusive distributorships.

At the end of the October 10 meeting, Roff and Roger Hart walked out to PS's parking lot and continued to discuss the business. Roger Hart told Roff "he realized that the distributorship agreements [weren't] exactly what he had thought they were." Roff advised Roger Hart that his options included refusing to buy the business, negotiating a reduced price, or going forward and conducting further investigation. Roff reminded Roger Hart that he still had conditions to purchasing the business, including time to investigate the business. Roff told him he could retain legal counsel or an accountant to assist him.

On October 11, 2006, Hart accepted the terms of Shotton's second counteroffer. Neither counteroffer contained language regarding PS's distributorships.

On November 27, 2006, the parties signed escrow instructions for the sale transaction. Those instructions stated:

"This escrow is contingent upon buyer's approval of successful transfer of *distributorship agreements* with both Veem and ZF Propellers to the new ownership. Seller will coordinate with both companies to acquire a letter acknowledging the change in ownership and agreement that [PS] will remain as their distributor in the territories defined in the distributor agreements. Buyer to notify escrow holder in writing upon satisfaction of said contingency.

[¶] . . . [¶]

*"These escrow instructions supersede any conditions set forth in the 'Agreement to Purchase' of CBE by and between the parties herein."* (Italics added.)

On an unspecified date thereafter, the parties signed an amendment to the purchase agreement, but its provisions did not contain any language regarding PS's distributorships.

On December 4, 2006, Shotton sent Hart an e-mail that attached copies of letters by which Veem and ZF accepted the transfer of PS's distributorships from Shotton to Hart. Shotton's e-mail also listed certain boat builders for which PS had locked-in supply agreements with Veem, whether permanently or provisionally. On the evening of December 4, Shotton provided Hart with copies of the Veem and ZF distributorship agreements.

On December 26, 2006, Hart sent a letter to MVE, stating: "The following contingencies have been satisfied: [¶] Buyer's approval of successful transfer of distributorship agreements with Veem & ZF Propellers." On or about January 13, 2007, escrow closed on the sale transaction and PS was transferred to Hart.

On December 5, 2008, the trial court entered a judgment for Shotton, PSI, and Roff in Hart's action against them. On December 23, Hart filed a motion for new trial based on insufficiency of the evidence to support the court's decision. (§ 657, subd. (6).) On January 30, 2009, the trial court denied that motion.

## C

Hart's primary assertion is that the trial court erred by denying the motion for new trial based on insufficiency of the evidence because the trial court was confused regarding the difference between an exclusive distributorship agreement and an exclusive supply arrangement. In closing argument, Hart's counsel argued those two concepts were

different and Roger Hart was told by Shotton and Roff that he would receive two exclusive distributorships. The trial court replied that it understood what he was arguing. Later in Hart's closing argument, the following exchange occurred between the trial court and Hart's counsel:

"THE COURT: [Hart's] going to turn over \$1.6 million to somebody who says, I have something. Then he finds out they don't have it. Then he finds out, well, I've got these—[you've] got to lock in these people here.

"[Hart's counsel:] That's a different issue.

"THE COURT: No, it's not a different issue. Because that is the definition of the exclusive distributorship.

"[Hart's counsel:] No, it isn't, your Honor. Those are two different things.

"THE COURT: Counsel, you have to lock them in. You say they're two different things.

"[Hart's counsel:] No. No. I'm sorry, they are two different things.

"THE COURT: Counsel, I'm telling you, they are the same thing. You want to make them different. They're not.

"[Hart's counsel:] Okay. Your Honor, the exclusive arrangements are different than exclusive distributorship agreements. They're two different concepts. The exclusive distributorship agreements involve suppliers. And the exclusive supply arrangements involve customers.

"THE COURT: You've already explained that to me. You don't need to do that again."

Contrary to Hart's assertion, we conclude the excerpts from the reporter's transcript quoted above do *not* show the trial court was confused about the difference between an exclusive distributorship agreement and an exclusive supply arrangement.

We presume the court understood that exclusive supply arrangements granted PS exclusivity only regarding a particular boat builder and not a territory. The court stated it understood the argument of Shotton's counsel that if PS had an exclusive distributorship for a territory (e.g., all West Coast boat builders), there would be no need for an exclusive supply arrangement with a West Coast boat builder. However, that did not show the court did not understand Hart's argument that an exclusive distributorship for a territory would apply to all customers, and not just registered boat builders, in that territory. Furthermore, based on our review of the entire record, we conclude the court understood exclusive supply arrangements would apply worldwide as to a particular boat builder that used Veem propellers. Although the court agreed with Shotton's counsel's general argument that exclusive distributorships for certain territories (e.g., West Coast) would not be necessary if PS had an exclusive supply arrangement with boat builders in that territory, we cannot presume the court ignored or disregarded the testimony of Shotton and Roff regarding the worldwide reach of an exclusive supply arrangement for a registered, or locked-in, boat builder. The court's comments in its tentative decision, as cited by Hart, do not necessarily show the court was confused on either or both of the two concepts, and we presume the court properly understood the concepts based on the evidence admitted at trial. The trial court found: "[Hart] realized these were exclusive supply arrangements. [It] realized and knew that [it] had to lock up these builders." The record supports an inference that the trial court correctly understood the differences between the two concepts. The record also supports its finding that Hart was disabused of its initial understanding that PS had two exclusive distributorships and instead needed



to obtain an exclusive supply arrangement for a particular boat builder to have worldwide exclusivity in selling Veem propellers to that boat builder. Furthermore, the fact the amended escrow instructions included a reference to distributorships for a territory did not necessarily show Shotton misrepresented to Hart that PS had exclusive distributorship agreements. Shotton testified he did not understand that language in the escrow instructions and we believe it is ambiguous, at best, on its face.

Based on our independent review of the record, including the testimony of Shotton and Roff, there is substantial evidence to support the trial court's finding that Shotton and Roff did not misrepresent to Hart that PS had exclusive distributorship agreements. Rather, the evidence supports the finding Roger Hart knew by the time of his October 10 meeting with Shotton and Roff and signing of the October 11 counteroffer that PS had only exclusive *supply* arrangements for certain boat builders. The record supports the trial court's findings and judgment and its order denying Hart's motion for new trial. We are unpersuaded by Hart's assertion that the court misunderstood the difference between the two concepts in either making its original findings based on the evidence or in subsequently denying Hart's motion for new trial. The court properly understood those concepts in finding neither Shotton nor Roff made any material misrepresentation to Hart, in finding there was no unilateral mistake by Hart regarding exclusive distributorship agreements, and in finding Roff did not breach his fiduciary duties to Hart. We conclude the trial court did not err by denying Hart's motion for new trial.

## II

### *Hart's Legal Claims*

Hart contends the trial court erred by denying the legal causes of action based on the court's findings made during the bifurcated trial on the equitable causes of action. Hart argues the claims for damages against Shotton based on fraud and breach of warranty and against Roff for negligence were not precluded by the trial court's findings on the equitable issues in the first phase of the trial.

Because the trial court's findings during the equitable phase of the trial had not yet resulted in a final judgment, Hart correctly argues the doctrine of collateral estoppel could not properly be applied to bar the legal claims. (*Daar & Newman v. VRL International* (2005) 129 Cal.App.4th 482, 489 [final judgment on the merits in previous proceeding is required for application of collateral estoppel].) However, a related doctrine may apply with the same effect as the application of collateral estoppel and result in the preclusion of legal causes of action when findings made during an equitable phase of a trial in the same action show an element of those legal causes of action is absent and/or cannot be proved. "It is well established that, in a case involving both legal and equitable issues, the trial court may proceed to try the equitable issues first, without a jury . . . , and that if the court's determination of those issues is also dispositive of the legal issues, nothing further remains to be tried by a jury." (*Raedeke v. Gibraltar Sav. & Loan Assn.* (1974) 10 Cal.3d 665, 671.)

As cited by the trial court in its statement of decision, *Nwosu* provides support for its conclusion that its findings during the equitable phase of the trial were conclusive on

issues involved in Hart's legal causes of action and therefore Hart was effectively estopped from relitigating those issues in a trial on the legal causes of action. In procedural circumstances similar to those in this case, the *Nwosu* plaintiff's equitable claims were tried first, resulting in the disposition of the plaintiff's equitable claim for fraud. (*Nwosu, supra*, 122 Cal.App.4th at p. 1242.) The trial court then concluded the trial of the equitable issues disposed of the legal claim for fraud, which incorporated all of the prior allegations in the plaintiff's complaint.<sup>4</sup> (*Ibid.*) *Nwosu* stated:

"The court may decide the equitable issues first, and this decision *may* result in factual and legal findings that effectively dispose of the legal claims. This is precisely what happened here, where the court's determination of the equitable issues in favor of [the defendant] precluded [the plaintiff's] recovery under his fraud theory. [¶] . . . [¶]

"In the present case, had [the plaintiff's] equitable and legal claims been litigated in separate actions, the prior determination of the equitable claims would have resulted in [the plaintiff] being collaterally estopped from asserting his legal claims. We acknowledge that the joinder of [the plaintiff's] claims in one action prevents application of this doctrine of collateral estoppel. The fact, however, that the parties chose to litigate their claims in a single action cannot change the impact of the court's prior determination of certain issues in the equitable phase of the trial upon the remaining legal claims. Just as the parties are bound by collateral estoppel where issues are litigated in a prior action, so, too, do issues decided by the court in the equitable phase of the trial become 'conclusive on issues actually litigated between the parties.' [Citation.] Thus, . . . a form of quasi-collateral estoppel occurred here; the prior disposition of the related claims by the court in equity estopped [the plaintiff] from relitigating the already determined issues in his claims at law." (*Nwosu, supra*, 122 Cal.App.4th at p. 1244.)

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<sup>4</sup> In deciding the equitable claims, the trial court in *Nwosu* found there was a sale and not a refinancing agreement, also alleged as the basis for the plaintiff's legal claims. (*Nwosu, supra*, 122 Cal.App.4th at p. 1243.)

In the circumstances of this case, we conclude the trial court properly applied the doctrine of "quasi-collateral estoppel," as discussed in *Nwosu*, to preclude Hart's legal causes of action. In rejecting Hart's cause of action for rescission based on fraud, the trial court expressly found neither Shotton nor Roff had made any material misrepresentation (e.g., that PS had two exclusive distributorships) that could have fraudulently induced Hart's agreement to purchase PS. That same finding applies to preclude Hart's cause of action for legal damages based on fraud, based on the same factual allegations and theory of fraud. Both the equitable and legal causes of action were based on the allegation Shotton and/or Roff had misrepresented that PS had two exclusive distributorships. Because the trial court expressly rejected that factual allegation in deciding Hart's equitable fraud cause of action, the cause of action for legal damages based on that same alleged fraudulent act is barred in the same manner as the plaintiff's legal damages claim was barred in *Nwosu*. None of the cases cited by Hart persuade us to conclude otherwise.

Likewise, the trial court properly applied the doctrine of "quasi-collateral estoppel," as discussed in *Nwosu*, to preclude Hart's legal cause of action against Shotton for breach of warranty. That cause of action incorporated the complaint's previous allegations and further alleged Shotton breached the purchase agreement's warranty that he had no knowledge of any major adverse developments materially affecting PS or its business not previously disclosed to Hart in writing. The complaint alleged Shotton breached that warranty because "key employees of [PS] had informed [Shotton and PSI] before the sale of [PS] that they intended to leave their employment after the sale or had received undisclosed salary commitments from [Shotton and PSI]; the customer warranty

claims actually made have far exceeded anything that was disclosed in writing to [Hart]; the computer operating systems and software had become outdated and not fully functional to operate [PS]; and [Shotton and PSI] were negotiating with a primary supplier to reduce inventory requirements." In its statement of decision following the equitable phase of the trial, the trial court found Shotton and Roff did not misrepresent to Hart, and Hart was not mistaken, regarding any of those alleged major adverse developments materially affecting PS. The court stated:

"Evidence was heard regarding [Hart's] claims relating to the following legal claims during the equitable trial and the factual issues posed by these claims were decided by the court in the course of the court's decision with respect to [Hart's] equitable claims:

"(a) Shotton made no material misrepresentation to [Hart] with respect to the status of employees or possible employee problems;

"(b) Shotton made no material misrepresentation to [Hart] regarding the asserted increasing inventory levels required for the business;

"(c) Shotton made no material misrepresentation to [Hart] regarding the level of business with Cabo Yachts due to the latter's temporary reduction of the purchase of propellers from [PS] for the Cabo Yachts 32 and 35 foot boats;

"(d) The status of employees, warranty claims and allegedly inadequate software were all presented in evidence and decided by the court adverse[ly] to [Hart]."

The trial court concluded factual and legal findings on Hart's equitable claims

"conclusively determined [Hart's] legal claims against defendants Shotton and PSI" in the fourth cause of action for breach of warranty.

Contrary to Hart's assertion, the factual issues underlying the breach of warranty cause of action *were* litigated by the parties, and decided by the trial court, during the

equitable phase of the trial. Therefore, the court properly applied the doctrine of "quasi-collateral estoppel," as discussed in *Nwosu*, in concluding Hart's breach of warranty cause of action was precluded by its findings during the equitable phase of the trial. The trial court's express findings necessarily include the implicit finding that there were no major adverse developments materially affecting PS not previously disclosed to Hart in writing. Accordingly, the trial court properly denied Hart's cause of action for breach of warranty damages.

Finally, we conclude the trial court properly applied the doctrine of "quasi-collateral estoppel," as discussed in *Nwosu*, to preclude Hart's legal cause of action against Roff for negligence. That cause of action incorporated the complaint's previous allegations and alleged Roff breached his duty to exercise reasonable skill and care in performing his duties to investigate and disclose to Hart material facts before Hart purchased PS. As discussed above, the trial court concluded during the equitable phase of the trial that Roff had not breached his fiduciary duties to Hart. The court found Roff did not misrepresent that PS had two exclusive distributorships or make any other misrepresentation of a material fact. Furthermore, the court stated: "Statements concerning the value of property are generally deemed to be expressions of personal opinion and not actionable representations of fact upon which the other party can rely." Based on those findings, the trial court properly applied the doctrine of quasi-collateral estoppel, as discussed in *Nwosu*, in concluding Hart's negligence cause of action was precluded by its findings during the equitable phase of the trial. The trial court's express findings necessarily include the implicit finding that Roff did not breach his duty to

exercise reasonable skill and care in performing his duties to investigate and disclose to Hart material facts before purchasing PS. Accordingly, the trial court properly denied Hart's cause of action against Roff for negligence damages.

### III

#### *Hart's Motion to Amend the Complaint*

Hart contends the trial court abused its discretion by denying its motion to amend the second amended complaint before trial on the legal causes of action.

#### A

After completion of the equitable phase of the trial, Hart filed a motion to amend the second amended complaint to add the following allegations:

"1. Allegations concerning breach of warranty claims . . . including:  
[¶] a. A claim that [Shotton and PSI] failed to tell [Hart] that sales from Cabo Yachts would be decreased due to warranty credits provided Cabo Yachts by a major competitor; [¶] b. A claim that [Shotton and PSI] failed to tell [Hart] that their major supplier, VEEM, would substantially increase its inventory requirements for [PS]; [¶] [and] c. A claim that . . . Shotton knew that a key employee was resigning;

"2. Allegations adding [Shotton and PSI] to [Hart's] Fifth Cause of Action against [Roff] based upon their Respondeat Superior responsibilities pursuant to Civil Code [sections] 2338 [and] 2339;

"3. A Seventh Cause of Action against [Roff, Shotton, and PSI] based on their Respondeat Superior responsibilities pursuant to Civil Code [sections] 2338 and 2335, for actual and/or constructive fraud . . . ."

In so moving, Hart submitted a proposed third amended complaint reflecting those amendments. Shotton, PSI, and Roff opposed Hart's motion to amend the complaint, arguing Hart had inexcusably delayed in moving to amend the complaint, which delay

would prejudice them, and some or all of those new claims were either futile or subsumed by existing claims.

In its statement of decision, the trial court denied Hart's motion to amend the complaint, stating:

"[Hart's] proposed amendment: [¶] (a) is not consistent with the stipulation for bifurcation; [¶] (b) should not be allowed at this time to revive claims the court has already determined; and [¶] (c) would be prejudicial to defendants."

## B

Hart does not carry its burden on appeal to show the trial court abused its discretion by denying the motion to amend the complaint. Hart does not persuade us the trial court's findings during the equitable phase of the trial would not preclude the new allegations in the same manner they precluded the existing allegations, whether on application of quasi-collateral estoppel or otherwise. In fact, Hart essentially admitted no new causes of action based on new facts were alleged in the proposed amended complaint, arguing below: "The proposed Third Amended Complaint, filed simultaneously with this motion herein, simply clarifies and expands upon the legal claims already made. These claims are based on the evidence heard at the initial trial concerning [Hart's] equitable claims. No new causes of action are being alleged based on any different facts or circumstances. The claims are consistent with and merely implement the Court's rulings to date for this matter."



However, the trial court's findings during the equitable phase of the trial precluded not only Hart's existing legal causes of action but also the new allegations in the proposed amended complaint. The trial court's statement of decision stated that:

"Evidence was heard regarding [Hart's] claims relating to the following legal claims during the equitable trial and the factual issues posed by these claims were decided by the court in the course of the court's decision with respect to [Hart's] equitable claims:

"(a) Shotton made no material misrepresentation to [Hart] with respect to the status of employees or possible employee problems;

"(b) Shotton made no material misrepresentation to [Hart] regarding the asserted increasing inventory levels required for the business;

"(c) Shotton made no material misrepresentation to [Hart] regarding the level of business with Cabo Yachts due to the latter's temporary reduction of the purchase of propellers from [PS] for the Cabo Yachts 32 and 35 foot boats;

"(d) The status of employees, warranty claims and allegedly inadequate software were all presented in evidence and decided by the court adverse[ly] to [Hart]."

Based on those findings and the finding that Roff made no material misrepresentations to Hart, the trial court properly concluded Hart's legal claims against Shotton and Roff were precluded and therefore the same findings precluded the claims alleged in Hart's proposed amended complaint. Hart does not persuade us the trial court abused its discretion in denying the motion to amend the complaint. (*Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486 [abuse of discretion standard applies in reviewing trial court's denial of motion to amend complaint].)

#### IV

##### *Substantial Evidence to Support Finding of Consent*

Hart contends the trial court erred by denying the equitable causes of action because there is insufficient evidence to support its finding that the parties had a meeting of the minds and consented to the sale transaction.

#### A

*Cause of action for rescission based on fraud.* Hart asserts the trial court erred by denying the equitable cause of action against Shotton and PSI for rescission based on fraud because there is insufficient evidence to support the trial court's finding Hart learned the truth about PS's distributorships soon after Roff represented that it had two exclusive distributorships. Based on our review of the record, including the evidence described in part I.B., *ante*, we conclude there is substantial evidence to support the trial court's finding that Hart was aware of the nature of PS's distributorships at the time Hart agreed to purchase PS and by the close of escrow. Without restating the testimony of Shotton and Roff described above, we note Roff testified at trial that at the October 10, 2006, meeting:

"Shotton explained to Roger Hart that the Veem distributorships were based on an exclusive supply arrangement where you had to lock in or register particular customers and they would protect you. And when it came to ZF propellers . . . [Shotton] had explained that he had heard from the general manager of ZF, the manager of US with ZF, and he said that all you have to do is e-mail me, and I'll protect you for that particular customer."<sup>5</sup>

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<sup>5</sup> Roff further testified that at the October 10 meeting Shotton told Roger Hart that regarding ZF that he (Shotton) spoke with ZF's national sales manager on the telephone

Roff further testified it was discussed that it was necessary to lock-in West Coast boat builders and register them with Veem to ensure those builders would be required to buy Veem propellers from PS. Shotton told Roger Hart that he (i.e., as PS's buyer) would have to register those boat builders with Veem to be guaranteed an exclusive supply agreement with each of them. Shotton told Roger Hart that PS would need to be locked up with boat builders in "[a]ny area" to require them to purchase Veem propellers only from PS. Shotton further told Roger Hart PS could sell Veem propellers to a boat builder anywhere in the country and register that builder with Veem. It was open territory for anyone to compete and sell Veem propellers. However, because PS was the only Veem distributor located on the West Coast, Shotton suggested PS focus on California and register as many boat builders there as it could. As Shotton explained, any East Coast distributor could work with a customer on the West Coast just like Hart (i.e., PS) could work with any customer on the East Coast. Most importantly, Roff testified at trial that Shotton specifically told Roger Hart at the October 10 meeting that Hart "*was not going to receive exclusive distributorships.*" (Italics added.) Instead, Hart was "going to receive exclusive supply arrangements for Veem."

Shotton testified at trial that at the October 10 meeting he told Roger Hart "what he was going to get[,] not what he wasn't going to get. *I told him . . . there were no territories . . . [and] you could sell anywhere. . . . We had [an] exclusive supply*

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and was informed that all Hart would have to do was call the sales manager and then e-mail him to register a prospective customer with ZF.

arrangement with Cabo Yachts. [I] explained the whole locking[-]in system that Veem had in place, to lock in boat builders up and down the West Coast. I explained to him that if he wanted to register boat builders and projects with ZF that he would have to e-mail Keith Sparks[,], my national sales manager . . . ." (Italics added.) Shotton told Roger Hart that PS had an exclusive supply arrangement with Cabo Yachts requiring any individual, propeller shop, or Veem distributor to buy any Veem replacement propeller through PS. Shotton testified he never told Roger Hart PS was the only distributor that could sell Veem propellers on the West Coast or ZF propellers in California. Furthermore, Roger Hart never asked Shotton if PS had two exclusive distributorships and never told him he believed PS had two exclusive distributorships.

At the end of the October 10 meeting, Roger Hart told Roff that "he realized that the distributorship agreements [weren't] exactly what he had thought they were." Roff advised Roger Hart that his options included refusing to buy the business, negotiating a reduced price, or going forward and conducting further investigation.

On October 11, 2006, Hart accepted the terms of Shotton's second counteroffer. Although Hart's initial offer on September 28 contained a condition that PS's exclusive distributorships be transferred to Hart, Hart's counteroffer did not contain any language regarding PS's distributorships despite the information obtained regarding PS's distributorships at the October 10 meeting.

Also, in late October, Shotton introduced Roger Hart to Joel Kmetz of General Propeller in Florida. Kmetz answered Roger Hart's questions about the propeller business and told him other ZF distributors competed with General Propeller for sales in

Florida. Likewise, Kmetz told Roger Hart there were no boundaries preventing General Propeller from selling ZF propellers elsewhere.

On November 27, the parties signed escrow instructions for the sale transaction.

Those instructions stated:

"This escrow is contingent upon buyer's approval of successful transfer of *distributorship agreements* with both Veem and ZF Propellers to the new ownership. Seller will coordinate with both companies to acquire a letter acknowledging the change in ownership and agreement that [PS] will remain as their distributor in the territories defined in the distributor agreements. Buyer to notify escrow holder in writing upon satisfaction of said contingency.  
[¶] . . . [¶]

*"These escrow instructions supersede any conditions set forth in the 'Agreement to Purchase' of CBE by and between the parties herein."*  
(Italics added.)

Any prior description in Hart's initial offer that PS's distributorships were "exclusive" was expressly superseded by the absence of such description in the escrow instructions.

On December 4, Shotton sent Hart an e-mail that attached copies of letters by which Veem and ZF accepted the transfer of PS's distributorships from Shotton to Hart. That e-mail also listed certain boat builders for which PS had "locked-in" supply agreements with Veem, whether permanently or provisionally. On the evening of December 4, Shotton provided Hart with copies of the Veem and ZF distributorship agreements.

On December 26, 2006, Hart sent a letter to MVE, stating: "The following contingencies have been satisfied: [¶] Buyer's approval of successful transfer of

distributorship agreements with Veem & ZF Propellers." On or about January 13, 2007, escrow closed on the sale transaction and PS was transferred to Hart.

Based on the above evidence, we conclude there is substantial evidence to support a finding that Hart was aware at the time of the parties' agreement (i.e., October 11, 2006, at the earliest) and by the close of escrow (i.e., January 13, 2007) that PS did not have exclusive distributorships for Veem and ZF for certain territories. Rather, as the trial court found, Hart knew PS had Veem and ZF distributorships that were not exclusive and had and could obtain only exclusive supply arrangements with certain boat builders. Although PS was the only Veem distributor on the West Coast and the only ZF distributor in California, there is substantial evidence to support a finding that Hart learned any exclusivity PS had in those areas was only an effective competitive advantage in terms of location and not the contractual ability to preclude other Veem and ZF dealers from selling those propellers in those areas. There is substantial evidence to support the trial court's finding that Hart was aware of the nature of PS's distributorships at the time of the parties' agreement and by the close of escrow. Implicit within the trial court's findings was the finding that the parties had a meeting of the minds regarding PS's distributorships and mutually consented to the purchase agreement. Accordingly, the trial court properly denied Hart's equitable claim for rescission based on fraud.

## B

*Cause of action for rescission based on unilateral mistake of fact.* Hart also asserts there is insufficient evidence to support the trial court's finding that there was no unilateral mistake of fact regarding the nature of PS's distributorships. Contrary to Hart's

assertion, there is substantial evidence, as discussed above, to support the trial court's finding that Hart knew PS did not have exclusive distributorships at the time of the parties' agreement and by the close of escrow. Accordingly, there is substantial evidence to support the trial court's finding Hart was not mistaken regarding PS's distributorships. Absent a mistake on Hart's behalf, Hart's cause of action for rescission based on unilateral mistake of fact was properly rejected. (See, e.g., *Donovan v. RRL Corp.* (2001) 26 Cal.4th 261, 278-279; Civ. Code, §§ 1577, 1689.)

## C

*Cause of action for breach of fiduciary duties.* Hart asserts there is insufficient evidence to support the trial court's finding that Roff did not breach his fiduciary duties owed to Hart. Hart argues Roff had a fiduciary duty to communicate to Hart his personal opinion regarding PS's value.

In its statement of decision, the trial court stated:

"[Roff] did not make any misrepresentation(s) of material fact fraudulently inducing [Hart] to purchase the business. Statements concerning the value of property are generally deemed to be expressions of personal opinion and not actionable representations of fact upon which the other party can rely."

In support of that finding, the court cited *Assilzadeh v. California Federal Bank* (2000) 82 Cal.App.4th 399, which sets forth that principle of law. (*Id.* at pp. 411-412.) Hart does not cite any case or other authority requiring a broker to disclose to a buyer of a business his personal opinion regarding its value.

Hart also argues there is insufficient evidence to support the trial court's finding that Roff did not misrepresent the nature of PS's distributorships. There is substantial

evidence, as discussed above, to support the trial court's finding that Hart knew PS did not have exclusive distributorships at the time of the parties' agreement and by the close of escrow. There is also substantial evidence to support an implied finding by the trial court that Roff learned the true nature of PS's distributorships at or about the same time as Hart. Accordingly, there is substantial evidence to support the trial court's finding that Roff did not breach his fiduciary duty to Hart to disclose the nature of PS's distributorships.<sup>6</sup> Absent such a breach, Hart's cause of action against Roff for breach of fiduciary duty was properly rejected.

## V

### *Admission of Evidence*

Hart contends the trial court erred by denying in limine motions to exclude evidence of Hart's negligence and lack of due diligence before the close of escrow on the sale of PS, and Hart's mismanagement of PS after the close of escrow.

## A

Prior to the bifurcated bench trial on Hart's equitable causes of action, Hart filed in limine motions to exclude evidence on Hart's negligence and lack of due diligence before the close of escrow on the sale of PS, and Hart's mismanagement of PS after the close of escrow. Hart argued evidence of negligence or lack of due diligence would not constitute a defense to Hart's fraud claim.

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<sup>6</sup> The trial court could have reasonably found Roff had no duty to disclose to Hart information or opinions Roff received from another potential buyer (i.e., Mr. Caligiuri).



In opposition, Shotton and PSI argued the evidence would not be presented to prove a defense to fraud, but rather to show Hart did not reasonably rely on the alleged misrepresentation. Therefore, the evidence would show Hart could not establish one element of a fraud cause of action (i.e., justifiable or reasonable reliance on the alleged misrepresentation). (*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1239-1240; *Seeger v. Odell* (1941) 18 Cal.2d 409, 414.) Shotton and PSI also argued the evidence would be presented to prove Hart could not establish the cause of action for unilateral mistake of fact. They argued rescission of the sale based on Hart's alleged unilateral mistake of fact would be unconscionable because of Hart's neglect of legal duty, lack of diligence, and other circumstances of the case. (*Donovan v. RRL Corp.*, *supra*, 26 Cal.4th at p. 280; *Schultz v. County of Contra Costa* (1984) 157 Cal.App.3d 242, 248.) Shotton and PSI also opposed Hart's motion to exclude evidence of postclosing mismanagement of PS, arguing rescission would be an inequitable remedy because Hart's mismanagement had substantially depreciated PS's value.

The trial court denied Hart's motions to exclude evidence on Hart's negligence and lack of due diligence before the close of escrow on the sale of PS, and mismanagement of PS after the close of escrow.

## B

Hart argues the trial court abused its discretion by admitting evidence of negligence and lack of due diligence before the close of escrow on Hart's purchase of PS. However, Hart does not show the court abused its discretion by implicitly admitting that evidence on the grounds on which Shotton and PSI sought to present that evidence. The

court could have reasonably concluded that evidence was admissible to show Hart did not reasonably rely on the alleged misrepresentation, thereby disproving one element of the fraud cause of action (i.e., justifiable or reasonable reliance on the alleged misrepresentation). (*Alliance Mortgage Co. v. Rothwell*, *supra*, 10 Cal.4th at pp. 1239-1240; *Seeger v. Odell*, *supra*, 18 Cal.2d at p. 414.) The court could also have reasonably concluded the evidence was admissible to show rescission of the sale based on Hart's alleged unilateral mistake of fact would be unconscionable because of neglect of legal duty, lack of diligence, and other circumstances of the case. (*Donovan v. RRL Corp.*, *supra*, 26 Cal.4th at p. 280; *Schultz v. County of Contra Costa*, *supra*, 157 Cal.App.3d at p. 248.)

## C

Hart argues the trial court abused its discretion by admitting evidence of Hart's mismanagement of PS after the close of escrow. However, Hart does not show the court abused its discretion by implicitly admitting that evidence on the ground on which Shotton and PSI sought to present the evidence. The court could have reasonably concluded that evidence was admissible to show rescission would be an inequitable remedy because Hart mismanaged the business and thereby depreciated PS's value. Hart does not cite any case or other authority persuading us to conclude otherwise.

## VI

### *Statement of Decision*

Hart contends the trial court's statement of decision was inadequate or deficient because it did not address each of the specific factual and legal issues listed in Hart's

proposed statement of decision and, instead, substantially adopted the defendants' proposed statement of decision to which Hart objected.

A

Section 632 provides:

"In superior courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required. The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial. . . ."

"[I]t is settled that the trial court need not, in a statement [of] decision, 'address all the legal and factual issues raised by the parties.' [Citation.] It 'is required only to set out ultimate findings rather than evidentiary ones.' [Citation.] ' "[U]ltimate fact[]" ' is a slippery term, but in general it refers to a core fact, such as an element of a claim or defense, without which the claim or defense must fail. [Citation.] It is distinguished conceptually from 'evidentiary facts' and 'conclusions of law.' [Citation.]" (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 559.) "The trial court is not required to make an express finding of fact on every factual matter controverted at trial, where the statement of decision sufficiently disposes of all the basic issues in the case." (*Bauer v. Bauer* (1996) 46 Cal.App.4th 1106, 1118.) A specific finding on a disputed factual issue is not required when that finding may necessarily be implied from a general finding. (*St. Julian v. Financial Indemnity Co.* (1969) 273 Cal.App.2d 185, 194.)

B

Hart argues the trial court's statement of decision was inadequate or deficient because it did not make an express finding regarding the specific date on which Hart learned the truth regarding PS's distributorships and did not cite the evidence in support of that finding. However, specific findings on those factual and evidentiary issues were not necessary to support the trial court's ultimate finding in its statement of decision that Hart did, in fact, learn the nature of PS's distributorships at the time of the agreement and before the close of escrow. We conclude the court's statement of decision sufficiently addressed and decided the ultimate factual issues controverted at trial and no further findings on specific facts were required in its statement of decision.

DISPOSITION

The judgment is affirmed. Defendants are entitled to costs on appeal.

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McDONALD, J.

WE CONCUR:

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BENKE, Acting P. J.

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O'ROURKE, J.